IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISIDICTION
WRIT PETITION NO.1796 OF 2005

Suhas Govind Lotlikar ..Petitioner

Vs.

Suresh Govind Lotlikar and Ors...Respondents

....

Mr.S.A.Bhagwat for Petitioner
Mr.J.M.Chodankar for Respondent no.1
Mr.A.J.Bhor for Respondent no.2

....

CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 22,2005

P.C.:

1. Heard Mr.Bhagwat, the learned counsel for the petitioner who is the defendant no.2 in L.C.Suit No. 158 of 2003.

2. The Plaintiff moved Chamber Summons No. 177 of 2005 for amendment of the plaint on or about 14th February, 2005 and the same has been made absolute by the impugned order dated 25.2.2005 passed by the learned Judge of the City Civil Court at Mumbai.

3. It is submitted by the learned counsel for the petitioner that by allowing the said amendment the nature of the suit is changed and the suit has been filed after about 20 years from the date of auction purchase of the suit property. A reference was made to the depositions of the plaintiff pointing out that

he does not possess any documentary proof to show that the suit property was purchased from the joint funds or in joint names.

4. The issues have been framed by the trial Court and the very first issue is regarding the suit property having been purchased in joint names of G.N.Lotlikar and defendant no.2 i.e. the present petitioner. The burden is cast on the plaintiff to prove the same. A copy of Roznama dated 28.1.2005 of the trial Court has been placed before me by the learned counsel for the plaintiff and the reasons in support of the impugned order find place in the said Roznama. The plaintiff and defendant no.2 are the real brothers and it is the plaintiff's case that the suit property was purchased in the auction sale from the family funds and therefore, he has a share in it. Under these circumstances, discretion exercised by the trial Court in favour of the plaintiff cannot be termed to be patently erroneous so as to call for interference in writ petition under Article 227 of the Constitution of India.

5. Petition therefore, fails and the same is hereby rejected.

[B.H.MARLAPALLE,J.]